

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VALERIE SOTO,

Plaintiff,

v.

AUTOVEST, L.L.C.,

Defendant.

Case No. 2:14-cv-01765-APG-VCF

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

(Dkt. ##28, 31)

Defendant Autovest, LLC sued plaintiff Valerie Soto in Nevada state court to collect on Soto's unpaid auto loan. Soto then filed this case against Autovest, alleging that its attempts to collect this debt violated the Fair Debt Collection Practices Act ("FDCPA").

Soto's FDCPA claim hinges on what statute of limitations period applies to collection of the debt. Soto believes a four-year period applies; Autovest contends it is seven years. Recently in the state action, Autovest received partial summary judgment that a seven-year period applies to Soto's claim.

Autovest now moves for judgment on the pleadings. It argues that the state court's determination about the applicable limitations period should govern here in federal court under the doctrine of issue preclusion. But Autovest has not established that the state court's decision is preclusive. One of the elements of issue preclusion is that the issue be determined in an action that has reached a final judgment. That has not yet happened because the state court action is still proceeding. I therefore deny Autovest's motion.

I. Discussion

A party may move for judgment on the pleadings "[a]fter the pleadings are closed." Fed. R. Civ. P. 12(c). "A judgment on the pleadings is properly granted when, taking all allegations in

1 the pleadings as true, the moving party is entitled to judgment as a matter of law.” *Nelson v. City*
 2 *of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1988).

3 The sole issue disputed in the present motion is whether the state court’s order on the
 4 applicable limitations period is binding on this court under the doctrine of issue preclusion. The
 5 doctrine of issue preclusion allows courts to conserve judicial resources, maintain consistency,
 6 and avoid harassment or oppression of the adverse party. *Alcantara v. Wal-Mart Stores, Inc.*, 321
 7 P.3d 912, 916 (Nev. 2014). There are four elements to issue preclusion under Nevada law, and
 8 each must be met:
 9

10 (1) the issue decided in the prior litigation must be identical to the issue presented
 11 in the current action; (2) **the initial ruling must have been on the merits and**
 12 **have become final**;...(3) the party against whom the judgment is asserted must
 have been a party or in privity with a party to the prior litigation; and (4) the issue
 was actually and necessarily litigated.

13 *Alcantara*, 321 P.3d at 916 (emphasis added). Here, Autovest has not established that the
 14 second prong is met.

15 Nevada courts look to the Restatement (Second) of Judgments for guidance when
 16 determining when a ruling has become “final.” *Berkson v. Lepome*, 245 P.3d 560, 566
 17 (Nev. 2010); *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 715 (Nev. 2008). The
 18 Restatement defines “final” judgment as the “last word of the rendering court.”
 19 Restatement (Second) of Judgments § 13 (1982). Generally, courts strictly apply the
 20 finality element. *Id.* at comment g.
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22 In the present case, the state court entered a partial summary judgment on the applicable
 23 statute of limitations, not a final judgment on the merits. Until a final judgment is issued, judges
 24 are free to revisit prior rulings. *See Acha v. Beame*, 570 F.2d 57, 59 (2d Cir. N.Y. 1978) cited
 25 approvingly by the Nevada Supreme Court in *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293,
 26 295 (Nev. 1979) (“[A]n interlocutory judgment is subject to revision at any time before the entry
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1 of judgment adjudicating all the claims and the rights and liabilities of all the parties. Whether
2 such revision is appropriate in any given case is within the sound discretion of the trial
3 judge.”). Nevada law explicitly requires that the issue be decided in a final judgment on the
4 merits constituting the “last word of the rendering court” before issue preclusion applies. *See*
5 *Alcantara*, 321 P.3d at 916; Restatement (Second) of Judgments § 13. Autovest has provided no
6 authority or analysis to suggest that a partial summary judgment constitutes a final ruling on the
7 merits for purposes of issue preclusion. Until the state case reaches a final decision on the merits,
8 Autovest cannot seek to give preclusive effect to any issues decided in that case. I therefore deny
9 Autovest’s motion.
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11 II. Conclusion

12 IT IS THEREFORE ORDERED that defendant’s Motion for Judgment on the Pleadings
13 **(Dkt. #28) is DENIED.**

14 IT IS FURTHER ORDERED that plaintiff’s Motion for Leave to File Sur-reply **(Dkt.**
15 **#31) is DENIED.**

16 IT IS FURTHER ORDERED that this case will remain STAYED pursuant to Magistrate
17 Judge Ferenbach’s March 27, 2015 Order. (Dkt. #27.)
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19 DATED THIS 30th day of July, 2015.

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23 ANDREW P. GORDON
24 UNITED STATES DISTRICT JUDGE
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